CIVIL APPEAL.

K. L. Lam for the appellant.

Respondent in person.

Cur. Adv. Vult.

Gill J.: This is an appeal under section 107 of the Mining Enactment (F.M.S. Cap. 147) against a decision of the senior inspector of mines, Selangor, rejecting the appellant's claim for the cancellation of sub-lease No. 16447 dated 30th January, 1962 granted by him as the holder of mining certificate No. 1420 for lot 3027 in the mukim of Ampang to the respondent.

The claim for cancellation of the sub-lease was made on the ground that the respondent was in breach of clause 8(iii) of the sub-lease in that he had not during a period of six months employed at least 54 labourers or labour-saving apparatus equivalent thereto as prescribed in section 16(iii)(b) of the Mining Enactment and that the land was only used for tailings retention while mining an adjacent piece of land.

The breach complained of was not denied by the respondent. The explanation he offered for not working on the land sub-leased to him was that the land was mostly hilly and could not be mined independently and that moreover there was no water to mine the land. He further stated that this land had to be mined in conjunction with the adjoining land comprised in mining certificate No. 1419 which belonged to him, and that he proposed to work out all the low ground before working the high ground on mining certificate No. 1420. He still had about 11 or 12 acres of his own land to work and it would take him about 1½ years to mine that land.

The senior inspector of mines rejected the appellant's complaint on the ground that it was difficult to mine high ground efficiently or economically other than by conventional methods and that there was also no water supply for operating the mine on the land comprised in mining certificate No. 1420 unless it was mined in conjunction with the land comprised in mining certificate No. 1419. In short, he said that the breach of clause 8(iii) of the sub-lease could not be considered very serious as it had to a large extent resulted from the technical difficulties of mining the land.

Similar difficulties were raised by this very respondent in the case of *Muthiah* v. *Lee Kor Fan.*[1] MacIntyre J. said in that case (at page 112):—

> "If I should make an order which would allow the permit holders to carry on as they had planned to mine these lands, it would be tantamount to exercising my discretion to deprive a lawful owner of property the right to use it to his best advantage.
>
> Whether the plaintiff is able to find a suitable dumping area or not is his concern but an inspector of mines had wide powers under section 82 of the Mining Enactment to direct any occupier of mining land to deposit his tailings on State land or mining land. As for sources of water supply to work a mine it is again a matter for negotiation and arrangement with owners of adjoining lands."

With respect I agree with and adopt the observations of the learned judge in that case.

It is true that the senior inspector of mines has discretion as regards cancellation of a sub-lease, but this discretion has to be exercised judicially on cause shown by the person complained against. Technical difficulties about mining the land, in my opinion, do not amount to a sufficient cause for non-cancellation of a sub-lease. The sub-lessee must be deemed to have known these technical difficulties when he obtained the sub-lease. In the present case the adjoining land belongs to him and there was no reason why he could not have started mining operations on the land sub-leased to him before mining his own land.

In the circumstances I would allow the appeal, set aside the order of refusal by the senior inspector of mines and make an order that the sub-lease be cancelled. The respondent to pay the costs of this appeal.

Appeal allowed.

Solicitors: *Oorjitham & Lam.*

THONG SENG POH & ANOR. v. THONG MENG TEE

[A.C.J. (Ismail Khan J.) August 27, 1966]

[Seremban — Civil Appeal No. 3 of 1964]

Landlord and Tenant — Claim for possession — Mode of assessing value to landlord of possession of his own premises.

Practice and Procedure — Appeal to Federal Court — Jurisdiction — Amount or value of subject-matter — Court of Judicature Act, 1964, s. 68(1).

The respondent had claimed possession of certain premises on the ground that he reasonably required the premises for his own occupation and the appellants had alternative accommodation. There was also a claim for mesne profits. The sessions court made an order for possession of the premises and for mesne profits at the rate of $60 a month from the date of judgment. The appellants' appeal to the High Court was dismissed and they applied for stay of execution pending the determination of their appeal by the Federal Court. Their application was resisted by the respondent on the ground that the subject matter of the appeal was less than $500 and no leave of the Federal Court had been obtained. The rent of the premises was $32 a month and it was argued, the rent for the twelve months would be less than $500. For the appellants it was argued that appeal to the Federal Court was a matter of jurisdiction and the value of the subject matter was more than $500.

Held: the burden of showing that the subject matter was less than $500 was on the respondent and as in this case the value of the possession of the premises, of which the respondent had been denied for over twenty years, was certainly more than $500, the objection of the respondent must fail.

Cases referred to:—

(1) *Mohamed Hussain & Anor.* v. *Pavadise* [1956] M.L.J. 63.

(2) *Alaggapa Chettiar* v. *Coliseum Cafe* [1962] M.L.J. 111.

(3) *Mohideen Hadjiar* v. *Pitchey* [1893] A.C. 192.

(4) *Bank of New South Wales* v. *William Owston* (1878-9), 4 App. Cas. 270, 274.

CIVIL APPEAL.

Dato' S. P. Seenivasagam for the applicants.

Atma Singh Gill for the respondent.

Cur. Adv. Vult.

Ismail Khan J.: The respondent claimed possession of the half portion ground floor of premises No. 45, Main Road, Bahau (hereinafter called the said premises) on the ground that he reasonably required it for his purposes and that the appellants had alternative accommodation. There was also a claim for mesne profits. The sessions court made an order for possession of the said premises and for mesne profits at the rate of $60 a month from the date of the judgment. Their appeal to the High Court having been dismissed, the appellants applied for a stay of execution pending the determination of their appeal by the Federal Court.

This application is resisted by the respondent on various grounds. His first objection is that as the subject-matter of the appeal is less than $500, the appellants should have obtained leave to appeal under section 68(1) of the Courts of Judicature Act, 1964. In this case no such leave was obtained.

Mr. Atma Singh for the respondent referred to 1957 Rule No. 1* made under the Rule Committee Ordinance, 1955, which he contended prescribed the method of calculating the value of the subject-matter. This Rule reads:—

"1. This rule shall apply throughout the Federation and shall come into operation on the 1st day of June, 1957.

2. Where costs are awarded by the Supreme Court in an appeal or on a cross appeal from a decision of a lower court, the profit costs shall ordinarily be a sum equal to thirty per centum of the value of the subject matter of the appeal or cross appeal:

Provided however that in cases of special importance or difficulty the judge hearing the appeal shall have power if so requested when awarding such costs to direct that the same be taxed in accordance with the Scale of Costs applicable to proceedings in the Supreme Court in the Settlement or the State and to give any such directions concerning the maximum amount to be allowed on such taxation as in the circumstances may be just;

Provided further that in any appeal relating to the recovery of immovable property the value of the subject matter of the appeal shall be deemed to be 12 months rent of the premises or the annual value added to the amount or any money claim for rent or mesne profits or damages."

He argued that as the rent was only $32 a month, the rent for the twelve months, the value of the subject-matter according to the second proviso to the above rule, would be less than $500.

Dato' Seenivasagam for the appellants submitted that this rule has no application. The appeal to the Federal Court is a matter of jurisdiction and this is governed by the Courts of Judicature Act, 1964, and the relevant section is section 68(1)(a) thereof. This section reads:—

"68. (1) No appeal shall be brought to the Federal Court in any of the following cases:

(a) when the amount or value of the subject-matter at the trial is less than five hundred dollars, except with the leave of the Federal Court or a judge of the High Court;

. . . . . ."

I am disposed to accept this submission.

Section 4(d) of the Rule Committee Ordinance, 1955, empowers the committee to make rules for, among other purposes, prescribing the fees and percentages to be taken in, and for regulating all matters relating to the costs of, proceedings in the Court of Appeal, the High Court or Subordinate Courts. The 1957 Rule 1 was made pursuant to the above section of the Ordinance to regulate the award of costs in an appeal from the lower court. This rule came into force before the passing of the Courts of Judicature Act, 1964. I can find nothing in the Act to indicate that it has in any way modified the words "No appeal shall be brought to the Federal Court . . . . when the amount or value of the subject-matter at the trial is less than five hundred dollars, except with the leave of the Federal Court or a judge of the High Court" in section 68(1)(a) of the Act.

The question of assessing the amount or value of the subject-matter at the trial is not free from difficulty as the following two cases would show: *Mohamed Hussain & Anor.* v. *Pavadise*,(1) and *Alagappa Chettiar* v. *Coliseum Cafe*.(2) It is clear, however, from these cases that the burden of showing that the subject-matter was less than $500 is on the respondent. In the first case, Spenser Wilkinson J. suggested various ways in which one could assess the value to a landlord of the possession of his own house. As an example, in that case the tenant was receiving $96 a month from his sub-tenants which was in excess of a monthly rent of $75 which he paid to the landlord. It was suggested by his Lordship that if on regaining possession the landlord sub-let parts of the premises in such a way as to bring him in $96 a month while he ceased to receive the $75 a month from the tenant, he would instead be receiving $96 a month from the sub-tenants and would, therefore, gain substantially to the extent of $21 a month. His Lordship held that a right which results in a gain

* This Rule was repealed by tht R.S.C. 1957 as amended by L.N. 138/1960.

which brings in $21 a month must be worth more than $500.

In the next case, the appellant, the registered proprietor of certain premises, obtained an order for possession of the said premises and payment by the defendant of mesne profits. At the date of the commencement of the proceedings the total amount of mesne profits was something like $900. According to Thomson C.J. (as he then was) the claim for possession is ancillary to the claim for mesne profits, and in assessing the amount or value of the subject-matter it is necessary to take into account mesne profits. He based this view on the decision of the Privy Council case of *Mohideen Hadjiar* v. *Pitchey*,[3] read in the light of what was said by Sir Montague Smith in the case of *Bank of New South Wales* v. *William Owston*.[4] His Lordship however added that "if these reasons be not well-founded", it is for the party who alleges that the case falls within one of the exceptions set out in section 37 of the Ordinance (now section 68(1) of the Courts of Judicature Act), to show something that has been either proved or has been admitted or is capable of showing that the allegation of fact on which his objection rests is made out. In that case, his Lordship held that there was no evidence, apart from the mesne profits, that the value of the relief asked for, that is, the possession claimed, is less than $500.

In the instant case, there is no question of taking into account the mesne profits as these were claimed only as from the day of judgment. It was for the respondent to show from the evidence if the value of the landlord's possession of the premises was less than $500. All he did was to show that the rent was $32 a month. With this evidence, and relying on the second proviso to the 1957 Rule 1, he sought to establish that its value was less than $500. This, as I have indicated, is not the correct approach. On the other hand, there is evidence that for twenty years the respondent had been denied the use of his own premises which he now requires for the expansion of his business in hardware, building materials and estate supplies. The value of such a possession would certainly be more than $500.

The objection therefore fails, and I shall now hear the other grounds of objection.

Order accordingly.

ANGLO-ORIENTAL PLANTATIONS LTD. v. D'CRUZ

[O.C.J. (Ismail Khan J.) August 27, 1966]

[Seremban — Civil Suit No. 85 of 1966]

Master and Servant — Occupation by servant of premises for more effective performance of his duties as such servant — Dismissal of servant — Whether servant has right to continue to occupy premises — Pending dispute before industrial court

The defendant was in occupation of a bungalow belonging to the plaintiffs which he occupied for the more effective performance of his duties as Chief Clerk. He was dismissed by the plaintiffs and he was asked to vacate the premises. The plaintiffs asked for an order that the defendant do quit and vacate the premises. The defendant contended that the termination of services was contrary to the agreed procedure and that the dispute regarding this matter was before the industrial court.

Held: (1) where a person occupied premises as a servant of the owner for the more effective performance of his duties as such servant and he is dismissed, he has no right to continue to occupy the premises;

(2) even if it is decided that his dismissal was wrongful, this being a contract for personal services, the court would not enforce specific performance of the contract to employ him and the defendant would only be entitled to damages, including compensation for loss of the use of the bungalow;

(3) therefore there must be an order in favour of the plaintiffs.

Cases referred to:—

(1) *Janisse* v. *Livesey* [1944] 4 D.L.R. 73.

(2) *Collison* v. *Warren* [1901] 1 Ch. 812 at p. 817.

(3) *Canadian Pacific Railway* v. *Gaud & Ors.* [1949] 2 K.B. 239 at p. 241.

(4) *Thomson* v. *Park* [1944] K.B. 408 at p. 409.

(5) *Kamuning (Perak) Rubber & Tin Co. Ltd.* v. *Abraham* [1965] 1 M.L.J. 20.

CIVIL SUIT.

Wong Seng Chow for the plaintiff.

E. V. Devadason for the defendant.

Cur. Adv. Vult.

Ismail Khan J.: The plaintiffs are a limited company and are the owners of a bungalow situated on Lot No. 3303/3309 Grant No. 1712 in the mukim of Rantau, district of Seremban, in Seremban Estate.

The defendant was employed by the plaintiffs as a chief clerk on the said estate and was in occupation of the said bungalow free of rent.

On 27th June, 1966, the plaintiffs commenced this action against the defendant praying for judgment for:—

(i) An order that the defendant and all persons holding through or under him do quit and vacate the bungalow now occupied by him forthwith or in the alternative;

(ii) For an injunction restraining the defendant and all persons holding through or under him from remaining in or upon the said bungalow;

(iii) For damages in respect of the unlawful occupation of the said bungalow by the defendant from the 3rd day of September 1965 up to the date when vacant possession of the said bungalow is given;

(iv) Costs of this action; and

(v) Such further and other relief as may be just.

The circumstances which led to this action are as follows. The defendant was in occupation of the said bungalow for the more effective performance of his duties as chief clerk. On 3rd